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Paper No. 5

Loren G. Helmreich  
Browning Bushman  
5718 Westheimer Ste 1800  
Houston TX 77057

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**APR 25 2003**

**OFFICE OF PETITIONS**

In re Application of  
Burke et al.  
Application No. 09/641,190  
Filed: August 17, 2000  
Attorney Docket No. SVEJKOVSKY-22

ON PETITION

In re Application of  
Burke et al.  
Application No. 10/042,753  
Filed: July 23, 2002  
For: SEASONING SYSTEM AND METHOD

This is a decision on the petition under 37 CFR § 1.182 submitted by facsimile transmission on December 4, 2002, requesting that the Continued Prosecution Application (CPA) under 37 CFR § 1.53(d) be treated as application under 37 CFR § 1.53(b) and be accorded a filing date of July 23, 2002.

On March 14, 2002, the Office mailed a nonfinal Office action in application No. 09/641,190, which set a three (3) month shortened statutory period for reply. In response, on June 24, 2002 (certificate of mailing June 13, 2002), applicants filed an amendment. On July 23, 2002, applicants filed two (2) requests for a CPA under 37 CFR § 1.53(d), accompanied by application papers including a specification, claims, drawings, and a preliminary amendment, based on prior application No. 09/641,190.

On December 4, 2002, applicants filed the present petition, application papers, including a specification, claims, drawings, a preliminary amendment, and an authorization to charge the petition fee. Applicants explained that a CPA was filed in Application No. 09/641,190 on July 23, 2002. However, applicants intended to file a continuation application under 37 CFR § 1.53(b) rather than the CPA. Applicants requested that the CPA under 37 CFR § 1.53(d) be treated as an application under 37 CFR § 1.53(b) and be accorded a filing date of July 23, 2002.

The petition is granted.

The application under 37 CFR § 1.53(b) filed on July 23, 2002, has been assigned application No. 10/042,753. The CPA request and the application papers have been removed from the file of application No. 09/641,190, and have been placed in application No. 10/042,753. Copies of the CPA request and the present petition will be retained in application No. 09/641,190 to complete the record therein. All further correspondence concerning the application under 37 CFR § 1.53(b) should be directed to application No. 10/042,753 not application No. 09/641,190.

The Office finance records will be corrected to show that the \$740.00 filing fee and the \$198.00 excess claim fees were paid in application No. 10/042,753, not in application No. 09/641,190. The \$130.00 petition fee will be charged to Deposit Account No. 02-4345, as authorized in the petition.

As a result of the above decision, application No. 10/042,753 has been granted a filing date of July 23, 2002. However, Figures 17-19 of drawings described in the specification appears to have been omitted on July 23, 2002.

**NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION**

I. Should applicants contend that the figures were, in fact, deposited in the U.S. Patent and Trademark Office (USPTO) on July 23, 2002, a petition and the \$130.00 petition fee (which will be refunded if it is determined that the figure was, in fact, received by the Office) with evidence of such deposit must be filed within **TWO MONTHS** of the date of this Notice.

II. Should applicants desire to supply the figures and accept the date the figures are filed in the Office as the filing date, the figures, a petition under 37 CFR 1.182 requesting that the filing date be corrected to correspond to the date the figures are filed in the Office and the \$130.00 petition fee must be filed within **TWO MONTHS** of the date of this Notice.

The failure to file a petition and petition fee under options (I) or (II) above, within two months of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited on July 23, 2002.

**THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) OR (b).** In the absence of a timely petition, the application will maintain the filing date of July 23, 2002, and the original disclosure of the application will include only those papers present in the Office on that date.

In the event that applicants elects not to take action pursuant to options (I) or (II) above, an amendment of the specification to cancel all references to the figure is required. Such amendment should be by way of preliminary amendment submitted

NOT AVAILABLE


prior to the first Office action to avoid delays in the prosecution of the application. **Any response related to this Notice should be directed to:**

**Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

Application No. 09/641,190 will be forwarded to the Office of Patent Publications.

Application No. 10/042,753 will be forwarded to the Office of Initial Patent Examination to await any response to the "Notice Of Omitted Item(s)" and for further processing under 37 CFR § 1.53(b), not under 37 CFR § 1.53(d), with a filing date of July 23, 2002 (unless applicant selects Option II., above).

Telephone inquiries concerning this matter may be directed to Senior Petitions Attorney Christina Tartera Donnell at (703) 306-5589.

  
Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions